

Decision 04-10-026 October 28, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
For Expedited Approval Under Public Utilities
Code Section 851 to Grant an Easement Over
PG&E Fee Property to the City of Santa Maria for
Construction, Public Access and Maintenance of
a Multi-Purpose Trail along the Santa Maria
Valley Railroad Right-of-Way.

Application 04-08-010
(Filed August 10, 2004)

**OPINION AUTHORIZING AN EASEMENT ON UTILITY PROPERTY TO THE
CITY OF SANTA MARIA UNDER PUBLIC UTILITIES CODE SECTION 851
FOR THE CONSTRUCTION OF A MULTI-PURPOSE TRAIL**

Pursuant to Pub. Util. Code § 851, Pacific Gas and Electric Company (PG&E) is authorized to grant an easement over PG&E fee property to the City of Santa Maria for the construction, public access and maintenance of a multi-use trail along the right-of-way of the Santa Maria Valley Railroad. The concurrent motion for an expedited procedural schedule filed by PG&E is also granted, as set forth. This proceeding is closed.

Background

Pub. Util. Code § 851 requires a public utility to secure authorization from the Commission before encumbering or transferring any of its properties or rights necessary or useful in the performance of its duties as a public utility. The City of Santa Maria (City) is designing and constructing a citywide system of bicycle paths and multi-use trails for public use. One of these trails would traverse a parcel of real property owned by PG&E and the City requested an

easement be granted by PG&E to allow for the construction, use and maintenance of the trail. PG&E is requesting authorization from the Commission to grant the easement.

The parcel is a narrow strip of land, 16 by 715 feet, commonly known as the Fairway Fee Strip and identified by the Santa Barbara County Assessor as Parcel Number 111-510-066. The Fairway Fee Strip runs in a north/south direction and is adjacent to the Santa Maria Valley Railroad right-of-way on the west and a Santa Barbara County Flood Control land strip on the east. The City plans to install pavement on the parcel not to exceed 10 feet in width. PG&E uses the Fairway Fee Strip for a 115-kilovolt transmission line that includes two electrical towers on the property. The project plans specify that no construction materials are to be stored under the towers or transmission lines. During construction, the City will use the Flood Control District property for staging, parking and storage.

Along with this application, PG&E concurrently filed a motion requesting an expedited procedural schedule to avoid the possible loss of \$200,000 in federal grant monies secured by the City. The project is in the public interest and cannot be completed without the federal grant and we will therefore expedite the schedule.

Pursuant to Rule 35 of the Commission's Rules of Practice and Procedure (Rules), representatives of the City co-signed and support this application.

Payment/Ratemaking

As payment for the easement, PG&E will receive a one-time payment of \$1,000 from the City. The original and current net book value of the property is \$2,460. The property is used for the purpose of electric transmission and is included in PG&E's rate base, subject to ratemaking jurisdiction by the Federal

Regulatory Energy Commission. Granting the easement will not result in changes to the rate base as no property is being sold. The easement payment will be credited to PG&E's Electric Other Operating Revenue account.

Transaction in the Public Interest

Pub. Util. Code § 851 requires that transactions involving public utilities shall be in the public interest. Copies of this application were served on the City, Santa Barbara County Counsel, California Resources Agency, California Environmental Protection Agency, United States Environmental Protection Agency, United States Department of the Interior and the Commission's Energy Division and its Office of Ratepayer Advocates. No protests or comments opposing this application were received. Granting the easements will not interfere with the operation of PG&E facilities or with the level of service to its customers and is not adverse to the public interest. Construction of the multi-use trail will benefit the public by allowing access for bicycles, walking and others on routes off of city streets.

Railroad Right-of-Way Clearance

The Fairway Fee Strip is adjacent to the Santa Maria Valley Railway right-of-way and railroad tracks. Clearances between the proposed multi-use trail and the railroad track shall comply with the Commission's General Order (GO) 26-D (rules regarding clearances along railroad rights-of-way).

Environmental Review

The California Environmental Quality Act (CEQA, Public Resources Code Sections 21000 *et seq.*) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential significant

environmental effects of the proposed activities.” (Title 14 of the California Code of Regulations, hereafter CEQA Guidelines, Section 15002.)

Because the Commission must issue a discretionary decision (*i.e.*, grant Section 851 authority) without which the proposed activity will not proceed, the Commission must act as either a Lead or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines, Section 15051(b)).

Here, the City is the Lead Agency for the project under CEQA. The Commission is a Responsible Agency for the proposed project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency’s environmental documents and findings before acting upon or approving the project. The specific activities a Responsible Agency must conduct are contained in CEQA Guidelines, Section 15096.

The City, as Lead Agency, conducted an environmental review for the development of the multi-use trail and found that the project will not have a significant effect on the environment. The City prepared a Negative Declaration, in compliance with CEQA Guidelines, Sections 15070-15704, and a Notice of Determination, in compliance with Public Resources Code, Sections 7-1.01 and 7-10.08. Both documents were dated June 17, 1992 and both confirm the project will not have a significant effect on the environment.

Additionally, because the proposed project will receive federal funds, the California Department of Transportation (Caltrans) conducted its own environmental review in accordance with the National Environmental Policy Act (NEPA), 42, U.S.C.A., Section 4321, *et. seq.* As a result of its review, Caltrans

prepared a Programmatic Categorical Exclusion Determination, dated June 20, 1997, stating the project has no significant effect on the environment as defined by NEPA.

In this application, PG&E requests that the Commission find that the construction and maintenance of the multi-use trail is categorically exempt from CEQA pursuant to Section 15304 of the CEQA Guidelines. Section 15304 categorically exempts minor public alterations to the condition of land, water and/or vegetation (excluding healthy mature trees) and Section 15304(h) lists the creation of bicycle lanes on existing rights-of-way as an example of an appropriate exemption under this category.

Accordingly, we adopt the City's findings and find that an adequate review has been conducted for purposes of our approval and that the project is categorically exempt from CEQA. PG&E's request to approve this project as categorically exempt from CEQA is granted.

Categorization of Proceeding

The Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that a hearing was unnecessary. Based on the record, we conclude that the proceeding is properly categorized and that a public hearing is unnecessary.

Waiver of Comment Period

This is an uncontested matter where the decision grants the relief requested. Accordingly, pursuant to Rule 77.7 (f)(2) of the Rules, the 30-day period for public review and comment is being waived.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Kenneth L. Koss is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. By this application, PG&E seeks authority under Pub. Util. Code § 851 to grant an easement to the City of Santa Maria for the purpose of constructing and maintaining a multi-use trail within the City.
2. PG&E owns the subject property and uses it for the purpose of electric transmission.
3. The property is adjacent to the right-of-way of the Santa Maria Valley Railroad.
4. The City co-signed Application 04-08-010 and is in support of the easement being granted.
5. PG&E will receive \$1,000 from the City as payment for the easement and will credit the proceeds to its Electric Other Operating Revenue Account.
6. The City and PG&E prepared a draft Easement Agreement, identified now as LD 3410-34-1039, that details the terms and conditions of the proposed easement.
7. To timely access federal construction funds, PG&E requested an expedited procedural schedule in this proceeding.
8. GO 26-D contains rules on railroad clearances.
9. The City is the Lead Agency for the project under CEQA.
10. The Commission is a Responsible Agency for the project under CEQA.
11. The City found this project to be categorically exempt from CEQA.
12. Caltrans found this project will not have a significant effect on the environment, as defined by NEPA requirements.
13. This is an uncontested matter. No protests or other comments were received opposing this application.
14. The proposed easement is in the public interest.

Conclusions of Law

1. The applicant has satisfied the requirements of Pub. Util. Code § 851.
2. The applicant has satisfied the requirements of the Rules.
3. An evidentiary hearing is not required.
4. We find that the City conducted adequate CEQA review for the purposes of our approval.
5. We adopt the City's finding that this project is categorically exempt from the provisions of CEQA.
6. Our approval of the transaction is not adverse to the interest or rights of the public.
7. PG&E and the City should comply with the provisions of GO 26-D with respect to railroad right-of-way clearances.

O R D E R

IT IS ORDERED that:

1. The request of Pacific Gas and Electric Company (PG&E) to grant an easement to the City of Santa Maria (City) for the construction, use and maintenance of a multi-use trail is approved.
2. The City shall pay PG&E the sum of \$1,000 for the easement.
3. The applicant and the City shall comply with the terms and conditions of the easement agreement.
4. Within 30 days of issuing the grant, PG&E shall file an advice letter with this Commission noticing the completed transfer.
5. PG&E shall record the proceeds from this grant in its Electric Other Operating Revenue Account.

6. PG&E and the City shall comply with the provisions of General Order 26-D with respect to railroad right-of-way clearances.

7. The 30-day comment period is waived, as this is an uncontested matter.
8. This proceeding is closed.

This order is effective today.

Dated October 28, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners